IN THE SUPREME COURT OF TEXAS

NO. 04-0252

ALTON J. MEYER, MEYER ACQUISITION CORP., AND FORD MOTOR COMPANY, PETITIONERS,

v.

WMCO-GP, LLC AND BULLOCK MOTOR COMPANY, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

Argued March 23, 2005

JUSTICE O'NEILL, dissenting.

Clearly, a nonsignatory can compel a party who has signed an arbitration agreement to arbitrate a dispute under appropriate circumstances. *E.g.*, *Grigson v. Creative Artists Agency*, 210 F.3d 524, 528 (5th Cir. 2000); *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999). A party who has signed an agreement containing an arbitration clause may be compelled to arbitrate disputes with a nonsignatory when the signatory must rely on the terms of the agreement to prosecute claims against the nonsignatory. *Grigson*, 210 F.3d at 527 (citing *MS Dealers Serv. Corp.*, 177 F.3d at 947). A nonsignatory may also be entitled to compel arbitration when claims asserted by a signatory allege "substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Id.* (quoting *MS Dealers Serv.*

Corp., 177 F.3d at 947). But even the exceptionally strong policy favoring arbitration cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so. *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 293-94 (2002).

I agree with the court of appeals that neither prong of the *Grigson* test is satisfied in this case. While WMCO asserts that Ford and Meyer tortiously interfered with the purchase and sales agreement between WMCO and Bullock, its claims depend on the existence of the agreement, not its terms. In similar circumstances, the Fifth Circuit has declined to compel arbitration, noting that the mere fact that a dispute touches on an agreement containing an arbitration clause is an insufficient basis on which to compel arbitration. *Hill v. G.E. Power Sys., Inc.*, 282 F.3d 343, 348-49 (5th Cir. 2002). Neither is the second prong fulfilled. WMCO does not allege any substantially interrelated misconduct between Bullock and Ford or Meyer. To the contrary, WMCO asserts that Bullock was compelled by Ford and Meyer to breach the purchase and sales agreement and would have fully performed absent their interference.

Finally, I also agree with the court of appeals that the terms of the arbitration clause in the purchase and sales agreement between Bullock and WMCO express an intent to require arbitration of a relatively narrow scope of disputes – disputes "between the parties to [the] Agreement involving the construction or application of any of the terms, covenants, or conditions of [the] Agreement . . . ." 126 S.W.3d 313, 319. This language is considerably narrower than the standard, broad arbitration clause requiring arbitration of "'[a]ny controversy or claim arising out of or relating to this contract, or the breach thereof . . . .'" *Beckham v. William Bayley Co.*, 655 F. Supp. 288, 291 (N.D. Tex. 1987) (quoting Hoellering, *Arbitrability of Disputes*, 41 BUS. LAW. 125 (Nov. 1985) (citing K. Seide,

A Dictionary of Arbitration and Its Terms 21 (1970)). The strong policy favoring arbitration "cannot serve to stretch a contractual clause beyond the scope intended by the parties." *Id.* at 291-92.

Under these circumstances, the trial court did not abuse its discretion in refusing to compel arbitration. I respectfully dissent.

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Harriet O'Neill
Justice

OPINION DELIVERED: December 22, 2006.